



REQUEST FOR PROPOSALS
FOR RESIDENTIAL REFRIGERATOR RECYCLING PROGRAM
FOR CITY OF SANTA CLARA, DBA SILICON VALLEY POWER



SPONSORED BY:
CITY OF SANTA CLARA
SILICON VALLEY POWER

March 2015

REQUEST FOR A PROPOSAL FOR RESIDENTIAL REFRIGERATOR RECYCLING PROGRAM

FOR CITY OF SANTA CLARA, DBA SILICON VALLEY POWER

Introduction

The City of Santa Clara's Electric Department, doing business as Silicon Valley Power (SVP), wishes to obtain proposals for a residential refrigerator recycling program in Santa Clara which complies with the U.S. EPA's [Responsible Appliance Disposal \(RAD\)](#) recycling requirements.

Utility and Energy Efficiency Programs

Santa Clara's municipal electric utility (dba Silicon Valley Power) is a not-for-profit enterprise of the City of Santa Clara, and was established in 1896. Silicon Valley Power owns power generation facilities, has investments in joint ventures that produce electric power, and trades power on the open market. These efforts are directed toward ensuring its retail customers, the citizens, organizations and business of the City of Santa Clara a highly reliable source of electric power at competitive, stable rates.

SVP serves over 53,000 customers. The City of Santa Clara is located in the San Francisco Bay Area and has a population of 116,468. At the end of 2013, the utility had 53,154 meters with a peak demand of 482.4 megawatts. 44,758 of these customers were residential, but only 8.1% of power sales were to residents. Approximately 87% of sales went to commercial and industrial customers.

SVP's Public Benefit Programs (PBC) are separated into residential and business programs, with the majority of funding toward the business sector. This is due to the fact that the programs are required by City Council policy to be spent in the customer class from which the funding is received. This program would target residential customers.

Project Description and Scope of Work:

The proposed scope of work is open to Contractors who will pick up older working refrigerators and freezers from SVP residential customers upon request. The contractor must be able to take customer calls and schedule pick up of older units during normal business hours and provided a dedicated phone number specific to the Silicon Valley Power program. The contractor must also provide the ability for customers to schedule a pickup date and time online. All appointments must be no longer than a four hour window. An asset tag or other tracking mechanism must be utilized in order to validate that each refrigerator picked up is recycled per the RAD requirements. All refrigerators and freezers must be recycled to the RAD requirements in an approved facility. A rebate of \$50 per unit shall be paid directly to the customer and included in the total price billed to SVP. Monthly reports shall be submitted to SVP, which include the following information:

Customer Name
Customer Address
Customer Phone Number
Date Customer Request for Pickup is submitted
Date of pickup
Type of unit picked up (refrigerator/freezer)
Size of unit
Brand
Model Number
Primary or secondary unit
Location of unit within the home/garage/yard
Date check issued to customer
Total amount billed to SVP

Monthly reports shall be submitted electronically to SVP via an encrypted file to protect customer data. SVP shall provide an electronic version of its customer database on a monthly basis

Budget Available for Solicitation

SVP expects to contract for up to \$50,000 for a program through this RFP. However, SVP reserves the right to contract for fewer budget dollars, depending on the responses it receives.

RFP Procedure

Contact Procedure: All correspondence or contact with SVP, including questions about this RFP, shall be submitted in writing through email to SVP's official contact email address of "mmedeiros@siliconvalleypower.com". No interpretation, revision, or other communication regarding this RFP is valid unless received at SVP's official contact email address. All questions regarding the RFP document and process must be submitted in writing to the SVP official contact email address of "mmedeiros@siliconvalleypower.com" no later than 11:00 a.m. Pacific Daylight Time on April 9, 2015. SVP will reply to all questions no later than 5:00 p.m. Pacific Daylight Time on April 13, 2015. Note to all Contractors: No telephone inquiries or faxed questions will be accepted. SVP will provide answers to all questions submitted by Contractors according to the procedures described in this section, and which are received by SVP prior to 11:00 a.m. Pacific Standard Time (PDT), on April 9, 2015. Questions submitted after this time will not be accepted.

A Contractor that discovers an error or omission in its proposal package may withdraw that proposal package and resubmit, provided that it does so before the close of the solicitation period as specified above.

It is the Contractor's sole responsibility to ensure that its proposal package is received by SVP at the designated proposal delivery address by the close of the solicitation period as specified in this RFP. Bids that are delivered differently than discussed above will not be accepted. Proof of timely delivery (e.g., return receipt for certified, registered or overnight mail) must be obtained by the Contractor for each proposal package submitted.

SVP will not keep either the proposals responding to this RFP nor any contracts entered into as part of this solicitation confidential, except for certain pricing information (unit prices, labor rates, Contractor financial information). Furthermore, SVP will have no liability to a Contractor or other party as a result of any public disclosure of any proposal or contract.

SVP shall not reimburse any Contractor for any cost incurred in the preparation or submission of a proposal package and/or in any negotiations regarding the contract. This RFP does not, in any way, obligate SVP to award a contract, to pay any costs incurred in the preparation of a proposal to this request, or to procure or contract for services or supplies. This RFP is not a guarantee of work.

SVP reserves the right to withdraw this RFP at any time before executing final contracts with Contractors. SVP may accept or reject any or all responses, and may accept other than the lowest price proposed. SVP will not be liable, by reason of such withdrawal or rejection, to any Contractor submitting a proposal in response to this RFP. SVP may award only part of total program funds.

Submission Requirements

Proposal Form: Contractors must submit one original (double-sided and bound) of each proposal. Each proposal must be on recycled 8½" x 11" paper. In addition, Contractor shall also submit an electronic copy of the proposal in Microsoft Word format or a PDF version. Each copy should be on a CD in the format specified above. Proposals should be typed and should be as brief as possible and should not include any unnecessary promotional material. Restrict proposal to not more than 20 pages total, including all responses, reference work, and information about the firm and individuals assigned to the project.

Additional information submitted after the formal closing date and time will not be accepted, except that copies of a presentation may be provided during an oral presentation, if required.

Respondents are encouraged to refrain from using general marketing material and make this portion of the proposal as specific to Santa Clara and this scope of work as possible.

Proposal Submission and Delivery Address: *All proposal packages must be delivered to the address below by 4:00 p.m., PDT, on April 27, 2015.* Proposals which are faxed or emailed will not be accepted. To ensure fairness, proposals received after this deadline will not be accepted and will be returned unopened. SVP will date stamp and log in the proposal packages as they are received.

For all deliveries:

Silicon Valley Power, City of Santa Clara
ATTN: Mary Medeiros McEnroe
1601 Civic Center Drive, Suite 102
Santa Clara, CA 95050
Telephone: (408) 615-6646

Due to the possibility of delays, SVP recommends an expedited delivery service.

Proposal Requirements: The proposal must include: (1) the General Information form, included at the end of this document, (2) the proposal checklist, (3) all items required in the proposal checklist, and, (4) be within the page limits listed below. Each component of the proposal is discussed below.

Proposal Checklist: This section contains the completed checklist of items that must be included in the proposal.

- I. Program Narrative
 - A. Program Abstract: Not to exceed 250 words
 - B. Program Description / Overview: Not to exceed 2 pages
 - C. Program Budget: Not to exceed 1 page
 - D. Program Implementation
 - 1. Detailed Scope of Work
 - 2. Payment Schedule
 - E. Customer Interface
 - F. Subcontractor List (if any) and List of Activities
 - 1. Summary: Not to exceed 2 pages
 - 2. Detailed Information
 - G. Quality Assurance
 - H. Conclusion: Not to exceed 1 page
- II. Company Information and References: Not to exceed 1 page
- III. Experience: Not to exceed 2 pages
- IV. Customer complaint resolution discussion
- V. License, insurance and financial Information: As required
 - A. Affirmative statement of proper licensure, and insurance documentation: As required
 - B. Copy of each license
 - C. Certificate of Insurance
 - D. Financial Information, including any guarantees
- VI. Exceptions to the General Terms and Conditions
- VII. Signature Page: As required
- VIII. Supplemental Information: Not to exceed 2 pages

Detailed Explanation of Proposal Checklist:

- I. Program Narrative:
 - A. Program Abstract – Contractor's brief description of programs scope and objectives (not to exceed 250 words). Include specific geographic area that the program will serve.
 - B. Program Description
 - C. Program Budget
 - 1. Administrative Overheads and G&A
 - 2. Direct Implementation – Non-incentive Activities
 - 3. Direct Implementation – Incentives and Rebates
 - 4. If price discount is provided for picking up multiple units at the same appointment, please specify pricing structure
 - D. Program Implementation: Provide the following:
 - 1. Detailed Scope of Work: Provide a detailed scope of work. This detailed scope of work will form the basis of the contract specific conditions. The

scope of work shall describe Program Development Tasks and Program Implementation Tasks. The tasks should contain detailed descriptions of the individual tasks that Contractor proposes to complete (Task Descriptions).

2. Program Development: They include, but are not limited to, staff time to develop program tracking and reporting templates (if such templates do not already exist). Contractor should separately list each program development activity. For program development costs, Contractor will be paid on a time-and-materials basis (using fully-loaded labor costs) up to the not-to-exceed amount for that activity.
3. Payment Schedule: Invoices, accompanied by complete and accurate reports on work performed, shall be submitted to SVP on a monthly basis. All payments to the winning Contractors will be made by the City of Santa Clara. Payments will be processed upon verification of correctness of each submitted invoice. SVP reserves the right to question any invoice based on complaints, observations, reports, or data that in any way do not correspond to the information submitted in or with an invoice. In the event that an error is found in an invoice, the Contractor will be required to submit a corrected invoice. Expenses in excess of those specified in the Proposals will be reimbursed pursuant to the provisions set forth in the Call Agreement for Services (sample attached), allowing prior written approval from City. Provide not-to-exceed (NTE) amounts for each item in the Scope of Work. Briefly describe all costs used to calculate the unit price. Unit prices shall include implementation and administration costs.

E. Customer Interface: Describe process for customer participation.

F. Subcontractor Activities (if a subcontractor is proposed):

1. Summary (not to exceed 2 pages): Describe what portions of work will be subcontracted out. List subcontractors (to the extent known) and briefly describe what work each will perform.
2. Detailed Information: Provide a list of the subcontractor program team members, a brief description of the tasks performed by each member, and an estimate of the percent of the total budget assigned to each entity. If the primary contractor plans to sub-contract more than 50% of the total proposed budget, note the reason for this use of subcontractors.

G. Quality Assurance: Description of expected quality activities. Include procedures for scheduling and picking up old units. Quality assurance plans must address Contractor's plan for customer and contractor satisfaction and complaint tracking and verification. Successful Contractors will be required to submit a Quality Assurance Plan.

H. Conclusion: Not to exceed 1 page

- II. Company Information and References (not to exceed 1 page). Attach résumés of key personnel who will perform proposed work and who are assigned to project management and quality assurance. Provide three relevant, satisfactory references. Discuss examples of prior related work in implementing a program

- similar to the program outlined in this RFP. (Resumes should be no more than one page per person and do not count in the page limit for this section.)
- III. Experience (not to exceed 2 pages). Include Primary Implementer's and Subcontractors' company experience managing similar programs or projects.
 - IV. Customer Complaint Resolution. Describe procedures for tracking and responding to contractor and customer questions or complaints regarding program, and for resolving program or performance disputes with program participants or customers.
 - V. License, Insurance, and Financial Information: As required.
 - 1. Affirmative statement of proper licensure, and insurance documentation. Contractors shall describe what licenses are required for the work they propose to perform and include an affirmative statement that Contractor has all necessary licenses. Contractor shall include an affirmative statement that it has insurance for the required coverage shown in the general terms and conditions. It is the Contractor's responsibility to clearly identify information to be kept confidential.
 - 2. Copy of each license, as required. Contractor must submit an affirmative statement of proper licenses and insurance and copies of any and all licenses and/or registrations required for the performance of the proposed work, including those held by subcontractors. Required licenses could include, for example, State of California General Contractors and Electrical Contractors license (C10, and C-20 for HVAC); however, it is the Contractor's responsibility to determine what licenses are required.
 - 3. Certificate of Insurance: Contractor shall provide the certificate of insurance for the required coverage shown in the general terms and conditions. Proposed Contractors must meet the City's insurance requirements, as in the Sample Call Agreement for Services in its Attachment "B" (included in this RFP). Proof of insurance or the ability to obtain such insurance must be included in all proposal packets.
 - 4. Financial Information, including any guarantees: 2-3 years audited financial statements, including balance sheet, statement of cash flows, and income statement, and Dunn and Bradstreet number. If vendor cannot provide audited financial statement, they shall provide 2-3 years of complete income tax returns. Additionally, vendor shall provide proof of sufficient line of credit to perform the proposed work and proof or guarantee that Contractor will be able to remit payments to SVP if savings as documented by approved EM&V plan are less than Contractor's reported savings.
 - VI. Exceptions to the General Terms and Conditions
 - VII. Signature Page: As required
 - VIII. Supplemental Information: Not to exceed 2 pages. In this section, Contractor is invited, but not required, to provide any supplemental information that it thinks SVP should consider in evaluating Contractor's proposal.

Evaluation Process and Criteria:

A team of reviewers using the process described in this document will evaluate proposals. Eligible proposals must meet the following minimum requirements to be evaluated:

- (a) The proposal must contain all of the items contained in the proposal checklist.

- (b) The proposal must be submitted on time to the location identified in this package.
- (c) The programs in each proposal must be open to SVP customers only
- (d) The proposal must be within the budget range described in this RFP.

SVP staff will evaluate all proposals received by the due date in response to this RFP using evaluation criteria and methods determined by SVP. The criteria listed below will be evaluated to determine which, if any, Contractors may be selected to manage the development and implementation of this analysis.

Evaluation Criteria

- ☐ Relevant experience in similar programs
- ☐ Conformance with the RFP
- ☐ References from other clients in similar projects
- ☐ Price

SVP, at its own discretion, may request additional information from any or all proposed Contractors after the initial evaluation to clarify terms, conditions, and/or information submitted in proposals.

After evaluating all proposals, SVP will notify all proposed Contractors of their status by April 30, 2015. Contractors may be asked to respond to more detailed questions and participate in a phone interview with the SVP team. After these interviews, SVP will notify the Contractors of their status by May 7, 2015. SVP may enter into contract negotiations with the qualified Contractor. Negotiations, if initiated, are not a guarantee that SVP will execute a contract. SVP reserves the right to cancel this RFP at any time. Proposals failing to satisfy any of these requirements will be considered non-responsive. At its sole discretion, SVP may notify Contractors who have made errors or omissions that can be easily corrected, and these Contractors will be given seven (7) days to respond. It is within SVP's sole discretion to determine whether a proposal is responsive, and whether any submitted corrections cure a non-responsive proposal.

Confidentiality

In the course of performing Work, successful Contractors may have access to confidential commercial or personal information concerning, but not limited to, California residents, technological, ratemaking, legislative, and personnel matters, and practices of the City of Santa Clara. Contractor agrees not to disclose any such confidential information or otherwise make it available to any other person, including any affiliate of SVP that produces energy or energy-related products or services, without the prior written approval of SVP. Contractor shall implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect any personal or confidential information from unauthorized access, destruction, use, modification, or disclosure. Contractors are not guaranteed access to SVP Proprietary or Trade Secret information, including, but not limited to, customer data or information. However, if SVP does grant Contractor access to such information, Contractor and Contractor's employees and subcontractors will be required to sign SVP's non-disclosure agreement, attached as Amendment D.

Non-Exclusivity

THE PARTIES AGREE THAT THIS RFP WILL NOT ESTABLISH AN EXCLUSIVE CONTRACT BETWEEN THE CITY OF SANTA CLARA OR SVP AND CONTRACTOR, NOR CONSTITUTE A COMMITMENT BY SVP, WHETHER EXPRESS OR IMPLIED, TO CONTRACT. SVP EXPRESSLY RESERVES ALL ITS RIGHTS, INCLUDING BUT NOT LIMITED TO THE FOLLOWING: THE RIGHT TO UTILIZE OTHERS TO PERFORM OR SUPPLY WORK OF THE TYPE CONTEMPLATED BY THIS RFP; THE RIGHT TO REQUEST PROPOSALS FROM OTHERS WITH OR WITHOUT REQUESTING PROPOSALS FROM CONTRACTORS FOR WORK OF THE TYPE CONTEMPLATED BY THIS RFP, AND THE UNRESTRICTED RIGHT BY SVP TO RE-BID OR PERFORM ANY SUCH WORK.

Proposal Due Date and Delivery

Proposals must be delivered no later than April 27, 2015, or hand-delivered prior to 4:00 p.m. on April 27, 2015. If proposal is delivered by overnight mail, a City employee must acknowledge receipt by signature prior to April 27, 2015 at 4:00 p.m. Information must be delivered to:

City of Santa Clara
Silicon Valley Power
Mary Medeiros McEnroe
Public Benefits Program Coordinator
1601 Civic Center Drive, Suite 102
Santa Clara, California 95050

Late proposals will not be accepted. Questions and clarifications concerning this RFP may be sent to mmediros@siliconvalleypower.com.

Instructions to all Proposers

SVP will evaluate all proposals received by the deadline. Evaluation criteria are included in this document. SVP will be sole decision-maker on how these criteria are used to select the successful Proposal.

SVP staff, at their discretion, may hold phone interviews with one or more of the proposed Contractors, who will be required to attend such interviews, if requested. SVP will be the sole point of contact for all proposers. SVP reserves the right to reject any and/or all proposals. In submitting proposals, Contractors hold SVP and the City harmless from any claim or liability as a result of submitting such proposals.

Once the top ranking selection is known, a contract will be negotiated for the scope of services to be rendered and for the method of compensation. If agreement is not reached after a reasonable period of time, as determined by the Director of the Electric Utility, negotiations with the top selection will be terminated and negotiations will then be opened with the second choice of the selection committee. When agreement is reached, the agreement will be submitted by the City Manager to the City Council for approval and execution.

Attachments

- A. General Information Form
- B. Sample Call Agreement for Services
- C. Sample Call
- D. Non-Disclosure Agreement

ATTACHMENT “A”

General Information Form

To be completed by the proposer and placed at the front of your proposals

REQUEST FOR PROPOSALS

FOR RESIDENTIAL REFRIGERATOR RECYCLING PROGRAM

FOR CITY OF SANTA CLARA, DBA SILICON VALLEY POWER

Legal Name of Firm

Date

Contact Email Address

Firm's Telephone Number

Type of Organization (Partnership, Corporation, etc.)

Name of Main Contact and Title

Name, Title and Phone Number of Person to whom Project Correspondence should be
Directed

Address Where Correspondence Should be Sent

Company Address

ATTACHMENT “B”

CALL AGREEMENT BY AND BETWEEN THE CITY OF SANTA CLARA, CALIFORNIA AND

**(Insert contractor’s name here)
for _____ Services**

PREAMBLE

This call agreement (“Agreement”) is by and between the City of Santa Clara, California, a chartered California municipal corporation, with its principal place of business located at 1500 Warburton Avenue, Santa Clara, California 95050 (“City”) and _____, a _____ *insert appropriate corporation\contractor\partnership reference as required* _____, with its principal place of business located at _____ (“Contractor”). City and Contractor may be referred to herein individually as a “Party” or collectively as the “Parties” or the “Parties to this Agreement.”

RECITALS

Whereas:

- A. Contractor agrees to provide certain professional services to City on an on-call basis;
- B. Contractor has the ability and desire to provide the quality and type of professional services which meet the objectives and requirements of City as set forth in this Agreement; and,
- C. The Parties have specified in this Agreement the terms and conditions under which such services will be provided to and paid for by the City.

In consideration for the mutual promises contained in this Agreement, the Parties agree as follows:

AGREEMENT PROVISIONS

1. SCOPE OF SERVICES

1.1. To the extent possible, the professional services to be provided under this Agreement shall be performed in the City of Santa Clara and the services shall be described in detail by the Contractor and submitted in a written proposal to the City (“Services”). The Contractor’s final proposal will be included as an exhibit entitled, “Scope of Services” attached to a subsequent agreement between the Parties referred to in this Agreement as a “Call” or a “Call for Services.” Each Call will incorporate the terms of this Agreement by reference and must be signed by both Parties. Contractor agrees to provide professional services to the City as specified in each respective Call, to the extent funds have been authorized by the City.

1.2. No Services shall be performed or paid for under this Agreement except as specifically

set forth and required in a written Call. No compensation may be sought under this Agreement for work performed prior to the issuance of a Call or for work to be performed or paid for under another contract. No compensation shall be paid in excess of the maximum dollar amount indicated in each respective Call for Services.

- 1.3. The Parties acknowledge that on the Effective Date of this Agreement, they are unaware of the details of all of the services which may be needed by City or provided by Contractor during the term of this Agreement. The Parties intend to specify the details and value of such Services in a subsequent Call, if any. This Agreement does not require that any Call(s) be signed. The Parties intend to provide the details of the contractual relationship between the Parties in this Agreement, so that by incorporating the terms of this Agreement in the Call(s), the Call may be brief and address the specific Services to be provided, the details of the time when the Services are to be provided and the schedule and amount the Contractor is to be paid for such Services.

2. PAYMENT

- 2.1. **Not to Exceed Maximum Amount.** The total amount billed to, and paid by, City for Services provided and authorized expenses incurred under a Call shall not exceed the maximum dollar amount specified in the Call. Contractor shall complete all Services contained within the scope of a Call regardless of whether the not to exceed amount has been reached, at no extra charge to the City. However, Contractor shall not perform any Services outside the scope of the Call without prior written authorization when the amount billed for under a Call exceeds the maximum dollar authorized amounts in the Call.

- 2.2. **Monthly Invoices.** Unless provided otherwise in a particular Call, payment to Contractor shall be in accordance with the procedures in this paragraph 2.2 and in paragraph 2.3. On a monthly basis, Contractor shall prepare an invoice which includes an itemization of all time spent based on the percent of Services complete, as well as any Authorized Expenses incurred (i.e., Out-of-Pocket Costs, Sub-contracted Services and/or Extraordinary Expenses).

- 2.2.1. If a particular Call directs that an invoice be presented in a format of a time sheet rather than as a percentage of Services completed, the itemization on each monthly invoice shall set forth the amount of time (recorded in quarter hours), the name of the employee performing the task and a description of each task performed. After setting forth the time spent on a daily basis, the itemization will provide a summary, at its end, of the total hours spent by each employee for the month, the hourly rate charged for that employee, and the total value of the service rendered by that employee for the month. The amount billed for Services shall then be determined by adding the value for the Services rendered by each employee for that particular month.

- 2.2.2. All monthly invoices shall also include a written itemization of the Authorized Expenses incurred, if any, with a detail listing the cost and source of such expenses and when they were incurred.

2.2.3. Contractor shall maintain documentation of such time and costs for City inspection for a period of three (3) years from the date of termination of this Agreement.

2.2.4. Within thirty (30) days of receipt of an itemized written invoice from the Contractor, City shall pay Contractor the amount billed for Services performed and authorized costs incurred under the Call during that billing period.

2.3. Authorized Expenses. The amount billed for Services shall be determined as set forth in paragraph 2.2 above plus the following amounts, if allowed under the Call:

2.3.1. “Out-of-Pocket Costs”. Contractor’s Out-of-Pocket Costs are those expenditures made by Contractor, other than employees’ salaries and payment for Services of retained specialists, which are directly chargeable to the Services performed and which would not otherwise have been incurred by Contractor. Unless otherwise provided, the Out-of-Pocket Costs must be approved in writing in advance by City and may be billed to the City and reimbursed to the Contractor only as specifically authorized and set forth in each respective Call. Authorized Out-of-Pocket Costs shall be billed without additional markup or administrative charge;

2.3.2. Per Diem. A Call will state whether or not it includes an estimate for anticipated travel expenses. If the Call does not include an estimate for anticipated travel, then the provisions of this paragraph shall apply. A Party’s travel expenses include airfare, rental car, or mileage, lodging and meals. The Party who is receiving the services pursuant to a particular Call, is the Reimbursing Party. Prior to incurring any charge for travel, the Party planning to travel (“Traveling Party”) shall (1) confirm that the Reimbursing Party is available for meetings on the proposed dates and (2) provide (either verbally or by facsimile) a price quote to the Reimbursing Party for the anticipated airfare prior to the charge being incurred, the Reimbursing Party shall either verbally or by facsimile confirm that the airfare may be incurred; in the event that the Reimbursing Party verbally confirms that the airfare may be incurred, the Traveling Party *shall* confirm in writing (prior to incurring the charge) that the Reimbursing Party has agreed to the charge. All travel expenses shall be reimbursed at cost, with no mark-up. Hotel rooms shall not exceed a cost of \$125 per night unless otherwise agreed by Reimbursing Party. Airfare and car rentals shall be reimbursed at economy class, unless economy class is unavailable through no fault of the booking party. Mileage, if applicable, shall be reimbursed in accordance with the current IRS guidelines for mileage reimbursement. Reasonable attempts shall be made to make plane reservations in advance in order to take advantage of lower fares. In the event that travel plans must be canceled or re-scheduled due to the fault of the Reimbursing Party, then the Reimbursing Party shall pay for any costs associated therewith; if the travel is canceled or re-scheduled due to the fault of the Traveling Party, then the Traveling Party shall bear the expense. Invoices for travel expenses shall be supported by receipts, and shall be reimbursed in accordance with paragraph 2.2.1. Meals, if reimbursed, shall not exceed fifty dollars (\$50) per day.

2.3.3. Any authorized “Sub-contracted Services” incurred by Contractor.

Authorized Sub-contracted Services are services provided by a retained specialist or sub-contractor and may be billed to City only if specifically described and authorized in a Call. (Retained specialists and sub-contractors shall include individuals or organizations offering qualified special services to City who are particularly skilled in one or more fields and who may be occasionally employed by the Contractor to fill the need for special or unusual services. Unless otherwise provided, the cost of furnishing such special services must be approved in writing in advance by City and the costs billed to City and reimbursed to the Contractor shall be only the actual charges of the retained specialist or sub-contractor, without additional markup or administrative charge); and/or,

2.3.4. Any other authorized “Extraordinary Expenses” incurred, if any, as set forth in the Call. Authorized Extraordinary Expenses shall be billed without additional markup or administrative charge.

2.4. Retainer or Flat Fee for Services. The Parties to this Agreement may, from time to time, determine that payment for a certain Scope of Services set forth in a Call pursuant to this Agreement should be made to Contractor on a retainer or flat fee for Services basis (“Stipulated Fee”). If the Parties so agree, then the provisions of this paragraph and the provisions of paragraph 2.2.1 shall apply, unless the Call provides otherwise. The Call shall set forth the maximum monthly or annual fee agreed to by the Parties as it relates to any Agency Fee or to any Out-of-Pocket Costs, and Contractor shall not exceed the amount(s) agreed to without written approval of City. The maximum Agency Fee agreed upon by the Parties is deemed to fully compensate Contractor for all work necessary for Contractor to complete the Scope of Work set forth in a Call.

3. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR

City, through its authorized employees, representatives, or agents shall have the right during the term of this Agreement, and for three (3) years from the date of final payment under this Agreement, to audit Contractor’s books and records for the purpose of verifying any and all charges made by Contractor in connection with Contractor’s compensation under Calls made pursuant to this Agreement, including termination of Contractor’s Services. Contractor agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all charges submitted to City. Any expense not so recorded shall be disallowed to Contractor.

4. BUSINESS TAX LICENSE REQUIRED

Contractor must comply with Santa Clara City Code section 3.40.060, as that section may be amended from time to time or renumbered, which requires that any person who transacts or carries on any business in the City of Santa Clara pay business license tax to the City. A business tax certificate may be obtained by completing the Business Tax Affidavit Form and paying the applicable fee at the Santa Clara City Hall Municipal Services Division.

5. PROSECUTION OF WORK

Contractor shall perform the Services required under this Agreement and the Call(s) made pursuant to it in an efficient and expeditious manner. Contractor shall commence work on the Effective Date specified in the applicable Call. Contractor is responsible for any delays caused by Contractor, its agents or subcontractors, or caused by factors directly or indirectly under its control. No extension of time for performance shall be given for such delays.

6. QUALIFICATIONS OF CONTRACTOR; STANDARD OF WORKMANSHIP

Contractor represents that it has sufficient qualified personnel to furnish the Services described under this Agreement and that the Services will be furnished in accordance with generally accepted professional standards and practices in the industry.

The work furnished to the City pursuant to any of the Calls under this Agreement shall be of a quality acceptable to the City. The criteria for acceptance of the work provided under this Agreement shall be a product of neat appearance, well-organized, technically and grammatically correct. The minimum standard of appearance, organization and content of the documents shall be that used by the City for similar projects.

7. SUSPENSION OR TERMINATION

City may suspend or terminate this Agreement or any or all work covered under any Call under this Agreement at any time upon thirty (30) days' prior written notice. Contractor may terminate this Agreement as set forth in paragraph 6.4. Said termination or suspension shall be effective as of the thirtieth day after the date of the notice ("Effective Date of Termination"). This Agreement, and any portion of the Scope of Services described in any Call including but not limited to any specific task, project, study, advertisement or campaign, may be terminated by the City upon written notice delivered personally or by registered mail or equivalent mail or delivery service which provides for an office signature of receipt. With regard to termination of any portion of the Scope or any specific task, termination will be effective immediately, unless economic or practical considerations result in the Parties mutually agreeing to a specific termination date.

7.1. If such termination is due to the fault of Contractor, and if City agrees to make payment for all work and Services satisfactorily rendered up to the Effective Date of Termination, payment will be made within thirty (30) days of receipt of a statement for work and Services performed. Contractor shall immediately take proper steps to effect City's instructions, canceling any commitments previously authorized by City, if City so requires. City may deduct from such payment the amount of actual damage, if any, sustained by City by virtue of the failure to perform the Services or for breach of this Agreement by Contractor.

7.2. If such termination is not due to the fault of Contractor, then City agrees to make payment for all work and Services rendered up to the Effective Date of Termination within thirty (30) days from receipt of a statement for work and Services performed. Contractor shall immediately take proper steps to effect City's instructions, canceling any commitments previously authorized by City, if City so requires. City shall

reimburse Contractor for any costs, expenses or service charges incurred by Contractor as a result of canceling previously authorized outsourced services.

7.3. Upon termination of this Agreement, Contractor shall transfer, assign and make available to City or City's representative, all property and materials in Contractor's possession belonging to and paid for by City.

7.4. Contractor may suspend or terminate this Agreement upon completion of work on all outstanding Call(s). Contractor may terminate work under a particular Call if the City is in default of the terms of this Agreement or any Call.

8. AVAILABILITY OF FUNDS

City represents that adequate funds will be available to make payments for Services received as required by each Call.

9. CONTRACTOR IS AN INDEPENDENT CONTRACTOR

In performing work under this Agreement, Contractor is not an agent or employee of City, but is an independent contractor for professional Services with full rights to manage its employees subject to the requirements of the law. All persons employed by Contractor in connection with this Agreement will be employees of Contractor and not employees of City in any respect.

10. AMENDMENTS

No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties.

11. HOLD HARMLESS/INDEMNIFICATION

To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissioners, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost and/or expense or damage ("Claim"), including all costs and reasonable attorney's fees in providing a defense to any such Claim which arises from Contractor's acts, errors or omissions with respect to, or in any way connected with, the prosecution of the work performed by Contractor pursuant to this Agreement.

12. TERM OF AGREEMENT

Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall be three (3) years, beginning on the Effective Date and terminating three years later. However, this Agreement shall be deemed extended for such time as is necessary for Contractor to complete work on any Call which is issued prior to the termination date of this Agreement, but is still in progress on

the termination date of this Agreement. Any incomplete Call(s) which have been issued pursuant to the terms of a previous agreement between the Parties is/are hereby reaffirmed and each such Call shall remain in full force and effect under this Agreement, subject to the terms of such Call.

13. INSURANCE REQUIREMENTS

During the term of this Agreement, and for any period following the termination date as set forth in this Agreement, Contractor shall provide and maintain in full force and effect the following insurance policies:

- 13.1.** commercial general liability (including bodily injury and property damage);
- 13.2.** business automobile liability insurance;
- 13.3.** worker's compensation employer's liability; and
- 13.4.** if applicable, professional liability insurance.

Said policies shall be maintained with respect to employees and vehicles assigned to the performance of work under this Agreement with coverage amounts and with the required endorsements, certificates of insurance and coverage verifications as defined in Exhibit C, attached and incorporated by this reference. Contractor shall make its best effort to secure, and thereafter maintain in effect, such insurance policies. In the event that any required insurance policy expires or is terminated for any reason, Contractor agrees to replace the policy prior to any lapse in coverage. In the event any policy required under this Agreement is allowed to lapse, City may, in its sole discretion, elect to purchase the required insurance policy and the cost of such policy shall be charged to Contractor or withheld from the payments due to Contractor from City under this Agreement.

CONTRACTOR AGREES THAT, PRIOR TO EXECUTION OF THIS AGREEMENT, CONTRACTOR SHALL PROVIDE ITS INSURANCE BROKER WITH A COPY OF THIS PAGE OF THE AGREEMENT AS WELL AS WITH A COMPLETE COPY OF EXHIBIT C, AND WILL OBTAIN ASSURANCE FROM ITS CARRIER THAT ITS INSURANCE CARRIER WILL PROVIDE: (1) THE EXACT COVERAGES IN THE REQUIRED DOLLAR AMOUNTS STATED THEREIN, (2) AN ENDORSEMENT NAMING THE CITY OF SANTA CLARA, ITS COUNCIL, EMPLOYEES AND OFFICERS AS ADDITIONAL INSURED ON THE CGL AND BAL, AND (3) AN ACCORD EXPLICITLY STATING THAT "THE CITY OF SANTA CLARA, ITS COUNCIL, EMPLOYEES, AND OFFICERS ARE HEREBY ADDED AS ADDITIONAL INSURED IN RESPECT TO ALL LIABILITIES ARISING OUT OF CONTRACTOR'S PERFORMANCE OF WORK UNDER THIS AGREEMENT" AS REQUIRED BY PARAGRAPH 2 OF EXHIBIT C.

14. OWNERSHIP OF DATA AND INFORMATION

City shall own any written reports or other items deemed deliverables by the respective Call, as well as any documents, data or other information supplied by City to Contractor during the course of this Agreement. Contractor shall deliver said data and information to City whenever

requested to do so, but in any event within thirty (30) calendar days of the completion of the task. All material, including information developed on computer(s), which shall include, but not be limited to, data, artwork, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports, advertisements, pamphlets, mailers and other material developed, collected, prepared or caused to be prepared under this Agreement shall be the property of City whether or not used, so long as that material has been paid for by the City. City shall not be limited in any way or at any time in its use of said material. City acknowledges that it shall not own any of Contractor's proprietary, confidential or trade secret information, such as formulas, patterns, compilations, programs, devices, methods, techniques or processes through which Contractor derives independent economic value because the foregoing item[s] is not generally known to the public and is the subject of reasonable efforts to maintain its secrecy.

15. CONFIDENTIALITY OF DATA AND MATERIAL

- 15.1.** All ideas, memoranda, specifications, plans, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for Contractor and all other written information submitted to Contractor in connection with the performance of this Agreement shall be held confidential by Contractor and shall not, without the prior written consent of City, be used for any purposes other than the performance of the Services nor be disclosed to an entity not connected with performance of the Services. Such data information or reports may be viewed by or distributed to third parties only after prior written approval of City. Nothing furnished to Contractor which is otherwise known to Contractor or becomes generally known to the related industry shall be deemed confidential.
- 15.2.** Contractor shall take reasonable efforts to safeguard any and all City property entrusted to Contractor's custody or control; however, Contractor shall not be liable to City for any loss, damage, or destruction of any such property unless Contractor's actions constitute negligence or reckless disregard of City's property.
- 15.3.** A Party disclosing information to the other which it considers to be Confidential Information, shall clearly label that information "Confidential" before disclosing it to the other Party. Confidential Information means information which is of a non-public, proprietary or confidential nature belonging to the Disclosing Party, including without limitation, all reports and analyses, technical and economic data, studies, forecasts, trade secrets, research or business strategies, financial or contractual information, gas or coal reserve information, rates, loads, energy requirements, certain sales market information, research, developmental, engineering, manufacturing, technical, marketing, sales, financial, operating, performance, cost, business and process information or data, know-how, and computer programming or other written or oral information. Confidential Information may be in any form whatsoever, including without limitation writings, recordings, electronic or oral data, computer programs, logic diagrams, component specifications, drawings or other media. Only that information disclosed by a Party and clearly designated in writing as Confidential Information prior to its disclosure shall be deemed to be Confidential Information. Verbal information that is intended to be treated as Confidential Information shall be described in writing and identified as Confidential Information.

15.4. Contractor acknowledges that City is a public agency subject to the requirements of the California Public Records Act Cal. Gov. Code section 6250 et seq. City acknowledges that Contractor may submit information to City that Contractor considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Contractor acknowledges that City may submit to Contractor information that City considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Agreement (“Requestor”) for production, inspection and/or copying of information designated by a Disclosing Party as Confidential Information, the Receiving Party as soon as practical but within three (3) days of receipt of the request, shall notify the Disclosing Party that such request has been made by telephone call, letter sent via facsimile and/or by US Mail to the address and facsimile number listed at the end of the Agreement. The Disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the Receiving Party. If the Disclosing Party takes no such action, after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor’s demand and is not required to defend against it.

15.5. The Receiving Party may cooperate with the Disclosing Party in any efforts to prevent release of the Confidential Information; however, the Receiving Party shall not be required to expend any monies in excess of the cost of notifying the Disclosing Party by telephone, facsimile and/or mail of the pendency of a demand for the Confidential Information. So long as the Receiving Party complies with the provisions of notification set forth in this Agreement, the Receiving Party shall not be liable for, and Customer and City hereby release each other from, any liability for any damages arising from any requirement under the law that the Receiving Party release Confidential Information to a Requestor, and such release includes the officers, commissioners, employees, agents, council members, and directors, as those terms may apply to each Party hereto, without limitation.

15.6. The Receiving Party may, at its sole expense, institute, or intervene in any proceeding, in order to protect the Confidential Information from disclosure, and if the Disclosing Party requests and agrees in writing to indemnify the Receiving Party from any expense or liability for expenses, the Receiving Party may cooperate actively in any such action or proceeding; provided, however, that the Receiving Party shall have no duty to the Disclosing Party to actively cooperate, notwithstanding an offer by the Receiving Party to provide a complete indemnity.

16. CORRECTION OF WORK

The performance of Services by Contractor shall not relieve Contractor from any obligation to correct any incomplete, inaccurate or defective work at no further cost to City.

17. NOTICES

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

City of Santa Clara
1500 Warburton Avenue
Santa Clara, California 95050,
or by facsimile at (408) [insert fax number]

and to Contractor addressed as follows:

or by facsimile at (____) ____ - ____

18. CHANGES

City may, from time to time, request changes in the “Scope of Services” to be performed pursuant to a Call issued under this Agreement. Such changes, including any increase or decrease in the amount of Contractor’s compensation, which are mutually agreed upon by and between City and Contractor, shall be incorporated in written amendments to the Call, or included in a subsequent Call.

19. CONTRACT FOR ADMINISTRATIVE SERVICES

To the extent that this Agreement is a contract authorizing Calls to be made for Administrative Services, the City Council entered into such Agreement upon the recommendation of the City Manager pursuant to Section 1108 of City’s Charter. The policy decision with respect to the Services to be provided under this Agreement was made exclusively by the City Council.

20. SUB-CONTRACTING AND ASSIGNMENT

Except as specifically provided in this Agreement, the City intends that the work described in each Call must be performed by the Contractor and not by a subcontractor or agent of the Contractor. Contractor shall not assign any interest in this Agreement, or any Call issued pursuant to this Agreement, and shall not transfer any interest in same (whether by assignment or novation) without prior written approval of City. Inclusion of a subcontractor in a proposal attached to a Call, once signed by the City, constitutes written approval.

However, claims for money due to or to become due to Contractor from City under this Agreement may be assigned to a bank, trust company or other financial institution, or to a trustee in bankruptcy, provided that written notice of any such assignment or transfer shall be first furnished to City. In case of the death of one or more members of Contractor’s firm, the surviving member or members shall complete the Services covered by this Agreement or any incomplete Call. Any such assignment shall not relieve Contractor from any of its obligations or liability under the terms of this Agreement.

21. OTHER AGREEMENTS

This Agreement shall not prevent either Party from entering into similar agreements with others.

22. TOTALITY OF AGREEMENT

This Agreement embodies the entire Agreement between City and Contractor and all the terms and conditions agreed upon by the Parties to this Agreement. No other understanding, agreements, conversations, oral or otherwise, with any officer, agent, or employee of the City prior to the execution of this Agreement, regarding the subject matter of this Agreement shall affect or modify any of the forms or obligations contained in any documents comprising this Agreement. Any such verbal agreement shall be considered as unofficial information and in no way binding on either Party to this Agreement.

23. SERVICE WARRANTY

Contractor warrants that Services provided hereunder shall conform with the generally accepted professional practices and standards appropriate to the nature of the Services rendered, that the personnel furnishing said Services shall be qualified to perform the Services assigned to them and that the recommendations, guidance and performance of such personnel shall meet the standard of care normally practiced by engineers or contractors performing the same or similar Services. Contractor shall be required to correct, at no expense to City, all deficiencies in the performance of the contract service that results from Contractor's failure to observe and adhere to the above warranty and which are detected within one (1) year from the date of completion of the Services. Work performed under this warranty shall also be warranted for a one (1) year period from the date of completion of such work. Contractor shall be required to reimburse City for all misexpenditure of funds resulting from Contractor's deficient performance of its Services.

24. DISPUTE RESOLUTION

Any documented dispute between the Parties which arises during the performance of this Agreement and which the Parties cannot then resolve, shall be subject to the following administrative remedy prior to any litigation occurring between the Parties.

24.1. Internal Resolution. Both Parties shall attempt to resolve any controversy claim, problem or dispute arising out of, or related to, this Agreement through good faith consultation in the ordinary course of business. In the event that any problem or dispute is not resolved, by the project managers of each Party, either Party may upon written notice to the other request that the matter be referred to senior management officials within each respective organization with express authority to resolve the problem or issue. Such representatives shall meet or confer at least once in good faith, to negotiate a mutually acceptable resolution within ten (10) business days of such written notice. If the parties cannot reach a mutually agreeable resolution, then the dispute or issue shall be submitted to mediation within thirty (30) calendar days of the written request of one Party after the service of that request on the other Party.

- 24.2. Notice.** A Party with claims arising under this Agreement shall, within thirty (30) days of knowledge of said claim, begin the process of exhausting all administrative remedies, as well as any other administrative remedies required by law. If the final decision or outcome of any administrative proceeding is unacceptable to a Party, then within thirty (30) days of the date of that final decision, the dissatisfied Party shall give written notice (certified mail-return receipt requested) to the other Party of the issues it deems outstanding that must be submitted to mediation (Request for Mediation).
- 24.3. Mediation.** Any controversies between City and Contractor regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, except those for which the appropriate remedy should be injunctive relief shall be mediated within sixty (60) days of the date on the written Request for Mediation, or the soonest date thereafter that the mediator is available.
- 24.4. Mediator.** Within twenty (20) days or less of the written Request for Mediation, the Parties shall agree on one mediator. If they cannot agree on one mediator within such twenty-day period each Party shall list the names of three (3) potential mediators affiliated with the Judicial Arbitration and Mediation Service (“JAMS”) and shall supply them to the Party demanding the mediation. The Party demanding the mediation shall merge the names of all the potential mediators into a single list, not indicating which Party submitted the name. On that same date as all names are received by the demanding Party, the Parties shall jointly sign a letter directed to the San Jose office of JAMS, requesting that JAMS appoint a mediator from the enclosed list. If a Party refuses or fails to submit three (3) names within the three day period to the Party preparing the letter, then the letter shall be sent on the fifth day without input from the Party failing to submit names. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Agreement.
- 24.5. Costs.** The costs of mediation shall be borne by the Parties equally.
- 24.6. Discovery.** If, during any dispute between the Parties, a demand is made by Contractor for documents under the Public Records Act, the City shall have reciprocal rights to demand documents from Contractor.
- 24.7. Condition Precedent to Filing Suit.** Except as provided in Article 23.3, mediation under this section is a condition precedent to a Party filing an action in any court, unless that Party has made demand for mediation and the other Party has failed or refused to engage in mediation. In the event of litigation arising out of any dispute related to this Agreement, the Parties shall each pay their respective attorneys fees, expert witness costs and cost of suit, regardless of the outcome of the litigation.
- 24.8. Work Through Disputes.** If the City and the Contractor are unable to reach agreement on disputed work, the Contractor shall nevertheless proceed with the disputed work, and Payment therefore shall be as subsequently determined pursuant to this Article.

25. CAPTIONS

The captions of the various paragraphs of this Agreement are for convenience or record only, and shall not be considered or referred to in resolving questions or interpretations.

26. APPLICABLE LAW

Any dispute regarding this Agreement, including without limitation, its validity, interpretation, performance, enforcement and damages shall be determined in accordance with the laws of the State of California without regard to California's choice of law principles.

27. NO THIRD PARTY BENEFICIARY

This Agreement shall not be construed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

28. NO PLEDGING OF CITY'S CREDIT

Under no circumstances shall Contractor have the authority or power to pledge the credit of the City of Santa Clara, or to incur any obligation in the name of the City without City's prior written agreement or confirmation. Contractor shall save and hold harmless the City, its City Council, its officers, employees, boards and commissions for expenses arising out of any unauthorized pledges of City's credit by Contractor or its subcontractors under this Agreement. Contractor agrees to obtain City's approval of all expenditures in connection with any materials to be purchased, projects to be performed, advertising to be placed, work to be "outsourced" or other items or Services which will or might be charged to the City. Such approval, if verbal, shall be confirmed by the City in a written letter sent via facsimile and U.S. mail to Contractor in accordance with the terms of this Agreement.

29. USE OF CITY NAME OR LOGO

Contractor shall not use City of Santa Clara's or Silicon Valley Power's name, insignia, trademark, logo or distribute exploitative publicity pertaining to the Services rendered under this Agreement in any magazine, trade paper, newspaper or other medium without the express written consent of City.

30. MONITORING AND EVALUATION OF SERVICES

City may monitor the Services performed under this Agreement to determine whether Contractor's operation conforms to City policy and to the terms of this Agreement. City may also monitor the Services to be performed to determine whether financial operations are conducted in accordance with applicable City, county, state and federal requirements. If, in the course of monitoring and evaluation, City believes it has discovered any practice, actions, procedure or policy of Contractor which deviates from the terms of this Agreement, City may notify Contractor in writing and Contractor agrees to respond in writing to City within seven (7) calendar days regarding such action, procedure or policy. However, if any action of Contractor constitutes a breach of this Agreement, City may notify contractor in writing that the Agreement

has been terminated pursuant to the provisions set forth in this Agreement.

31. FAIR EMPLOYMENT

Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, gender, sexual orientation, age, disability, religion, ethnic background, or marital status, in violation of state or federal law.

32. SEVERABILITY CLAUSE

In case any one or more of the provisions contained herein shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

33. WAIVER

Waiver by a Party of any one or more of the conditions of performance under this Agreement shall not be construed as a subsequent waiver(s) of that condition or of any other condition of performance under this Agreement. No delay in exercising, partial exercise, or complete failure to exercise any right, power, or privilege under this Agreement shall operate as a waiver.

34. CONFLICT OF INTEREST

Contractor certifies that to the best of its knowledge, no City employee or officer of any public agency has any pecuniary interest in the business of Contractor and that no person associated with Contractor has any interest that would conflict in any manner or degree with the performance of this Agreement. Contractor represents that it presently has no interest and shall not acquire any interest, direct or indirect, which could conflict in any manner or degree with the faithful performance of this Agreement. Contractor is familiar with the provisions of California Government Code Section 87100 and following, and certifies that it does not know of any facts which constitute a violation of said provisions. Contractor will advise City if a conflict arises.

35. CONSTRUCTION AND INTERPRETATION OF AGREEMENT

This Agreement, and each of its provisions, terms and conditions, has been reached as a result of negotiations between the Parties. Accordingly, each of the Parties expressly acknowledges and agrees that this Agreement shall not be deemed to have been authored by, prepared by, or drafted by, any particular party, and that the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or in the resolution of disputes.

36. COMPLIANCE WITH ETHICAL STANDARDS

As a condition precedent to entering into this Agreement, Contractor shall:

- 36.1.** Read Exhibit A, entitled "ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SANTA

CLARA, CALIFORNIA” incorporated by this reference; and,

- 36.2.** Execute the affidavit included in Exhibit B, entitled “AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS” incorporated by this reference.

37. AFFORDABLE CARE ACT OBLIGATIONS

To the extent Agency is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act (“Act”) and/or any other similar federal or state law, Agency warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless City for any penalties, fines, adverse rulings, or tax payments associated with Agency’s responsibilities under the Act.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. The Effective Date is the date that the final signatory executes the Agreement. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

APPROVED AS TO FORM:

Dated: _____

RICHARD E. NOSKY, JR.
City Attorney

ATTEST:

ROD DIRIDON, JR.
City Clerk

JULIO J. FUENTES
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

“CITY”

***INSERT CONTRACTOR’S NAME**

*choose one: corporation/partnership/individual

Dated: _____

By: _____
(Signature of Person executing the Agreement on behalf of Contractor)

Name: _____

Title: _____

Local Address: _____

Email Address: _____

Telephone: () _____

Fax: () _____

“CONTRACTOR”

**CALL AGREEMENT BY AND BETWEEN
THE CITY OF SANTA CLARA, CALIFORNIA
AND
[INSERT NAME OF COMPANY]**

EXHIBIT A

**ETHICAL STANDARDS FOR CONTRACTORS
SEEKING TO ENTER INTO AN AGREEMENT WITH
THE CITY OF SANTA CLARA, CALIFORNIA**

Termination of Agreement for Certain Acts

- A. City may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:
1. If a Contractor¹ does any of the following:
 - a. Is convicted² of operating a business in violation of any Federal, State or local law or regulation;
 - b. Is convicted of a crime punishable as a felony involving dishonesty³;
 - c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or sub-contract;
 - d. Is convicted of any offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of a City Contractor or sub-contractor; and/or,
 - e. Made (or makes) any false statement(s) or representation(s) with respect to this Agreement.
 2. If fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with the Contractor can be imputed to the Contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Contractor, with the Contractor's

¹ For purposes of this Agreement, the word "Contractor" (whether a person or a legal entity) means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation] and who is active in the day to day operations of that corporation.

² For purposes of this Agreement, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

³ As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

knowledge, approval or acquiescence, the Contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.

- B. City may also terminate this Agreement in the event any one or more of the following occurs:
1. If City determines that Contractor no longer has the financial capability⁴ or business experience⁵ to perform the terms of, or operate under, this Agreement; or
 2. If City determines that the Contractor fails to submit information, or submits false information, which is required to perform or be awarded a contract with city, including, but not limited to, Contractor's failure to maintain a required State issued license, failure to obtain a City business license (if applicable) or failure to provide and maintain bonds and/or insurance policies required under this Agreement.
- C. In the event a prospective Contractor (or bidder) is ruled ineligible (debarred) to participate in a contract award process or a contract is terminated pursuant to these provisions, Contractor may appeal City's action to the City Council by filing a written request with the City Clerk within ten (10) days of the notice given by City to have the matter heard. The matter will be heard within thirty (30) days of the filing of the appeal request with the City Clerk. The Contractor will have the burden of proof on the appeal. The Contractor shall have the opportunity to present evidence, both oral and documentary, and argument.

⁴ Contractor becomes insolvent, transfers assets in fraud of creditors, makes an assignment for the benefit of creditors, files a petition under any section or chapter of the federal Bankruptcy Code [11 U.S.C.], as amended, or under any similar law or statute of the United States or any state thereof, is adjudged bankrupt or insolvent in proceedings under such laws, or a receiver or trustee is appointed for all or substantially all of the assets of Contractor.

⁵ Loss of personnel deemed essential by the City for the successful performance of the obligations of the Contractor to the City.

**CALL AGREEMENT BY AND BETWEEN
THE CITY OF SANTA CLARA, CALIFORNIA
AND
[INSERT COMPANY NAME]**

EXHIBIT B

**AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS
[CITY OF SANTA CLARA]**

I, _____, being first duly sworn, depose and say that I am the _____ (title or capacity) of _____ and I hereby state that I have read and understand the language, entitled “*ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA*” (herein “Ethical Standards”) set forth in Exhibit A. I have authority to make these representations on my own behalf or on behalf of the legal entity identified herein. I have examined appropriate business records and I have made inquiry of those individuals potentially included within the definition of “Contractor” contained in the Ethical Standards.

Based on my review of the appropriate documents and the necessary inquiry responses, I hereby state that neither the business entity nor any individual(s) belonging to a category identified in footnote #1 of Exhibit A [i.e., owner or co-owner of a sole proprietorship, general partner, person who controls or has power to control a business entity, etc.] has been convicted of any one or more of the crimes identified in Exhibit A within the past five (5) years. The above assertions are true and correct and are made under penalty of perjury under the laws of the State of California.

[Name of Company]

By: _____

Type name: _____

Title _____

NOTARY’S ACKNOWLEDGMENT TO BE ATTACHED

Please execute the affidavit and attach a notary public’s acknowledgment of execution of the affidavit by the signatory. If the affidavit is on behalf of a corporation, partnership, or other legal entity, the entity’s complete legal name and the title of the person signing on behalf of the legal entity shall appear above. Written evidence of the authority of the person executing this affidavit on behalf of a corporation, partnership, joint venture, or any other legal entity, other than a sole proprietorship, shall be attached.

**CALL AGREEMENT BY AND BETWEEN
THE CITY OF SANTA CLARA, CALIFORNIA
AND
[INSERT COMPANY NAME]**

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall provide and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

- 1.** Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

\$1,000,000 Each Occurrence
\$2,000,000 General Aggregate
\$2,000,000 Products/Completed Operations Aggregate
\$1,000,000 Personal Injury

- 2.** Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
- 3.** The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
 - a.** Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b.** There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - c.** Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance

Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of two million dollars (\$2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.

3. Cancellation.

- a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.
- b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

E. **ADDITIONAL INSURANCE RELATED PROVISIONS**

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
3. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

F. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Contractor, and each and every subcontractor (of every tier) shall, at its sole cost and expense, provide and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Contractor shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

G. EVIDENCE OF COMPLIANCE

Contractor or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, Contractor shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

EBIX Inc.		
City of Santa Clara Electric Department		
P.O. 12010-S2	or	151 North Lyon Avenue
Hemet, CA 92546-8010		Hemet, CA 92543

Telephone number:	951-766-2280
Fax number:	770-325-0409
Email address:	ctsantaclara@ebix.com

H. QUALIFYING INSURERS

All of the insurance companies providing insurance for Contractor shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.

ATTACHMENT “C”

Sample Call

The Parties to this Call No. *ENTER NUMBER (“Call”) agree that this Call is made pursuant to the terms of a Call Agreement between the Parties entitled, “Call Agreement by and between the City of Santa Clara, California and *INSERT CONTRACTOR’S NAME,” dated *ENTER EFFECTIVE DATE OF CALL AGREEMENT, the terms of which are incorporated by this reference. This Call describes the Services to be provided to the City of Santa Clara, California (“City”) by *INSERT CONTRACTOR’S NAME (“Contractor”), which are more fully described in Contractor’s proposal to City entitled “*INSERT TITLE OF PROPOSAL HERE” dated *ENTER DATE OF PROPOSAL (“Proposal”), attached to this Call as Exhibit A and incorporated by this reference. The Services to be performed under this Call shall be completed within the time period beginning on *ENTER DATE and ending on *ENTER DATE. The attached Proposal contains a complete description of the Services, and performance dates for the completion of such Services, to be performed by the Contractor under this Call. In no event shall the amount paid to the Contractor for the Services provided to City by the Contractor under this Call, including all fees or pre-approved costs and/or expenses, exceed *SPELL OUT DOLLAR AMOUNT dollars (\$*INSERT NUMERICAL DOLLAR AMOUNT), subject to budgetary appropriations.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

The Parties acknowledge and accept the terms and conditions of this Call as evidenced by the following signatures of their duly authorized representatives. The Effective Date is the date that the final signatory executes the Call. It is the intent of the Parties that this Call shall become operative on the Effective Date.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

APPROVED AS TO FORM:

Dated: _____

RICHARD E. NOSKY, JR.
City Attorney

ATTEST:

ROD DIRIDON, JR.
City Clerk

JULIO J. FUENTES
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

“CITY”

***INSERT CONTRACTOR’S NAME**

*choose one: corporation/partnership/individual

Dated: _____

By: _____
(Signature of Person executing the Agreement on behalf of Contractor)

Name: _____

Title: _____

Local Address: _____

Email Address: _____

Telephone: () _____

Fax: () _____

“CONTRACTOR”

AMENDMENT “D”

Non-Disclosure Agreement

CITY OF SANTA CLARA, CALIFORNIA CONFIDENTIALITY AGREEMENT

PREAMBLE

This Confidentiality Agreement (“Agreement”) is by and between *insert name, a *choose one: a _____ (enter State name) corporation/partnership/individual, with its principal place of business located at *insert primary business address (“Counterparty”), and the City of Santa Clara, California, a chartered California municipal corporation with its primary business address at 1500 Warburton Avenue, Santa Clara, California 95050 (“City”). City and Counterparty may be referred to individually as a “Party” or collectively as the “Parties” or the “Parties to this Agreement.”

RECITALS

- A. Counterparty and the City (the “Parties”) have agreed to enter into discussions concerning * _____ (“Transaction”);
- B. It is anticipated that all materials, documents and information (including meetings and discussions) concerning the Transaction may be exchanged and shared by the Parties and are confidential (“Confidential Information”); and,
- C. The Parties desire to have any such Confidential Information kept in the strictest confidence and maintain their respective rights without making the Confidential Information general public or common knowledge.

The Parties agree as follows:

AGREEMENT PROVISIONS

1. Definitions.

As used herein, the following terms have the following meanings.

- A. Confidential Information means information which is of a non-public, proprietary or confidential nature belonging to the Disclosing Party, including without limitation, all reports and analyses, technical and economic data, studies, forecasts, trade secrets, research or business strategies, financial or contractual information, rates, certain sales market information, research, developmental, engineering, technical, marketing, sales, financial, operating, performance, cost, business and process information or data, know-how, and computer programming or other written or oral information. Confidential Information may be in any form whatsoever, including without limitation writings, recordings, electronic or oral data, computer programs, logic diagrams, component specifications, drawings or

other media. Only that information disclosed by a Party and clearly designated in writing as Confidential Information prior to its disclosure shall be deemed to be Confidential Information. Verbal information that is intended to be treated as Confidential Information shall be described in writing and identified as Confidential Information.

- B. Disclosing Party is the Party to whom the Confidential Information originally belongs and who (after appropriate notice) shall bear the burden of pursuing legal remedies to retain confidentiality as set forth below in paragraphs 2E and 7.
- C. Receiving Party is the Party to this Agreement who receives information designated as Confidential Information by the Disclosing Party.

2. Exceptions.

The Parties to this Agreement agree to maintain as confidential, to the extent permitted by law, all Confidential Information. Notwithstanding the foregoing and the provisions of paragraph 1, the term Confidential Information shall not include (and neither Party shall be under any obligation to maintain in confidence or not use) any information (or any portion thereof) disclosed to it by the other Party to the extent that such information:

- A. is in the public domain at the time of disclosure; or
- B. at the time of or following disclosure, becomes generally known or available through no act or omission on the part of the Receiving Party; or
- C. is known, or becomes known, to the Receiving Party from a source other than the Disclosing Party or its Representatives (as defined herein), provided that disclosure by such source is not in breach of a confidentiality agreement with the Disclosing Party; or
- D. is independently developed by the Receiving Party without violating any of its obligations under this Agreement; or
- E. is legally required to be disclosed by judicial or other governmental action; provided, however, that prompt notice of such judicial or other governmental action shall have been given to the Disclosing Party and that the Disclosing Party shall be afforded the opportunity (consistent with the legal obligations of the Receiving Party) to exhaust all reasonable legal remedies to maintain the Confidential Information in confidence, in accordance with paragraph 7 below.

Specific information shall not be within the exceptions of sub-part 2A to 2E above merely because it is embraced by more general information within such exceptions.

3. USE OF CONFIDENTIAL INFORMATION.

The Confidential Information (i) may be used by the Receiving Party solely in connection with performing the tasks required under the Agreement and (ii) will be kept confidential

and not disclosed by the Receiving Party to any other person, except that Confidential Information may be disclosed to any of the Receiving Party's affiliates, directors, officers, council members, Strategic Allies, employees, attorneys and agents (collectively, its "Representatives") who require access to such information in connection with performing the tasks under the Agreement between the Parties. Each of the Parties agrees that any of its Representatives to whom Confidential Information is disclosed will be informed of the confidential or proprietary nature thereof and of the Receiving Party's obligations under this Agreement. Each Party shall be responsible for any use of Confidential Information by any of its Representatives.

4. RIGHTS TO CONFIDENTIAL INFORMATION.

The parties agree that (i) all rights to Confidential Information disclosed pursuant to this Confidentiality Agreement are reserved to the Disclosing Party; (ii) nothing in this Confidentiality Agreement shall diminish or restrict in any way the rights that each Party has to market, lease, sell, or otherwise make available its own products and services to any other customer or third party; and (iii) no license or conveyance or any rights under any discoveries, inventions, or patents is granted or implied by either Party to the other.

5. TERM.

This Confidentiality Agreement shall commence as of the Effective Date of the Agreement and may be terminated by either Party on thirty (30) days prior written notice with respect to subsequent disclosures and, unless sooner terminated by the Parties, shall terminate two (2) years after the date on which the Agreement expires.

6. NO OBLIGATION TO DISCLOSE.

Nothing in this Agreement shall obligate either Party to disclose specific Confidential Information, which disclosure shall be at the Disclosing Party's sole discretion.

7. PUBLIC RECORDS ACT.

Counterparty acknowledges that Santa Clara is a public agency subject to the requirements of the California Public Records Act Cal. Gov. Code section 6250 et seq. Santa Clara acknowledges that Counterparty may submit information to Santa Clara that Counterparty considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code sections 6254 and 6255). Counterparty acknowledges that Santa Clara may submit to Counterparty information that Santa Clara considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Agreement ("Requestor") for production, inspection and/or copying of information designated by a Disclosing Party as Confidential Information, the Receiving Party as soon practical but within three (3) days of receipt of the request, shall notify the Disclosing Party that such request has been made, by telephone call, letter sent via facsimile and/or by US Mail to the address and facsimile number listed at the end of the Agreement. The

Disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the Receiving Party. If the Disclosing Party takes no such action, after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor's demand and is not required to defend against it.

8. Liability.

The Receiving Party may cooperate with the Disclosing Party in any efforts to prevent release of the Confidential Information; however, the Receiving Party shall not be required to expend any monies in excess of the cost of notifying the Disclosing Party by telephone, facsimile and/or mail of the pendency of a demand for the Confidential Information. So long as the Receiving Party complies with the provisions of notification set forth in this Agreement, the Receiving Party shall not be liable for, and Counterparty and Santa Clara hereby release each other from, any liability for any damages arising from any requirement under the law that the Receiving Party release Confidential Information to a Requestor, and such release includes the officers, commissioners, employees, agents, council members, attorneys and directors, as those terms may apply to each Party, without limitation.

9. COOPERATION.

The Receiving Party may, at its sole expense, institute or intervene in any proceeding, in order to protect the Confidential Information from disclosure, and if the Disclosing Party requests and agrees in writing to indemnify the Receiving Party from any expense or liability for expenses, the Receiving Party may cooperate actively in any such action or proceeding; provided, however, that the Receiving Party shall have no duty to the Disclosing Party to actively cooperate, notwithstanding an offer by the Disclosing Party to provide a complete indemnity.

10. RETURN OF CONFIDENTIAL INFORMATION.

While this Agreement remains in effect, and for a period of ninety (90) days after termination, upon a Disclosing Party's request, the Receiving Party agrees to return to the Disclosing Party, or to provide an officer's certificate certifying that all Confidential Information has been destroyed, as promptly as practicable, but in all cases within thirty (30) days, all Confidential Information provided to the Receiving Party, including all copies of such Confidential Information, notes or other documents with respect to or reflecting such Confidential Information and materials derived from such Confidential Information in its possession or in the possession of its Representatives.

11. ENTIRE AGREEMENT.

This Agreement embodies all of the understandings between the Parties concerning the subject matter hereof, and merges all prior discussions and writings between them as to confidentiality of information other than as expressly provided in this Agreement, or as duly set forth subsequent to the date hereof in writing and signed by both Parties. This Agreement may not be assigned by either Party without the prior written consent of the

other Party except in connection with the sale of all or substantially all of the business or assets of the assigning Party.

12. REMEDIES.

Without prejudice to the rights and remedies otherwise available to the Disclosing Party, the Disclosing Party will be entitled to equitable relief by way of injunction if there is a breach or threat of breach of any of the provisions of this Agreement by the Receiving Party. The Parties agree and acknowledge that damages would not be an adequate remedy in the event of a breach of this Agreement.

13. AUTHORITY.

Each Party represents and warrants to the other Party that it has the full unrestricted authority to disclose its Confidential Information and to discuss or enter into a Contract without breaching any agreement or commitment with another party(ies) which would prohibit such discussions, disclosure or Contract.

14. GOVERNING LAW.

THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA EXCLUDING ITS CONFLICT OF LAW RULES. STATE AND FEDERAL COURTS SITUATED IN THE STATE OF CALIFORNIA SHALL HAVE EXCLUSIVE JURISDICTION TO RESOLVE ANY DISPUTES WITH RESPECT TO THIS AGREEMENT OR THE CONFIDENTIAL INFORMATION WITH EACH PARTY IRREVOCABLY CONSENTING TO THE JURISDICTION THEREOF FOR ANY ACTIONS, SUITS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE CONFIDENTIAL INFORMATION.

15. SEVERABILITY.

The provisions of this Agreement are severable, and if any one or more of such provisions is determined to be judicially unenforceable, the remaining provisions shall nevertheless be binding and enforceable.

16. INDEPENDENT CONTRACTOR.

The Parties acknowledge that no agency, joint or other fiduciary relationship shall be deemed to exist or arise with respect to the matters addressed in this Agreement.

17. NO FURTHER AGREEMENTS HEREUNDER.

Neither Counterparty nor City or any parent, subsidiary or affiliate thereof, shall be under any obligation to enter into any further agreements with the other signatory to this Agreement or its parents, subsidiaries or affiliates of any nature whatsoever as a result of this Agreement. The Parties shall be free at all times to hold negotiations or enter into

agreements with any other persons whatsoever (including with respect to projects under discussion by the Parties) in addition to or in lieu of the discussions hereunder and any such activities shall not be a breach of this Agreement or any obligations owed to the other Party hereunder. Each Party reserves the right, in its sole discretion, to decline and make, to retract or to reject at any time any proposal which has not yet become legally binding by execution of a written agreement between the Parties with respect thereto or with respect to any further agreements or business arrangements with the other Party, its parents, subsidiaries or affiliates and to terminate all further discussions and negotiations.

18. AMENDMENT.

This Agreement may not be modified, amended or waived except by a written instrument duly executed by both Parties.

19. WAIVER.

No failure or delay by either Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

20. ASSIGNMENT.

This Agreement may not be assigned by either Party without the prior written consent of the other and shall be binding on, and inure to the benefit of, the respective successors of the Parties.

21. Headings.

The headings used herein are for aid in reference only and shall not be used to interpret the substantive portions of this Agreement.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. The Effective Date is the date that the final signatory executes the Agreement. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

APPROVED AS TO FORM:

Dated: _____

RICHARD E. NOSKY, JR.
City Attorney

ATTEST:

ROD DIRIDON, JR.
City Clerk

JULIO J. FUENTES
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

“CITY”

***INSERT CONTRACTOR’S NAME**
*choose one: corporation/partnership/individual

Dated: _____

By: _____
(Signature of Person executing the Agreement on behalf of
Counterparty)

Name: _____

Title: _____

Local Address: _____

Email Address: _____

Telephone: () _____

Fax: () _____

“COUNTERPARTY”